

Office Action Summary**Application No.**

10/785,673

Applicant(s)

MINETTI ET AL.

Examiner

S. DEVI, Ph.D

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 16-21 and 27-40 is/are pending in the application.
- 5a) Of the above claim(s) 27-30 is/are withdrawn from consideration.
- 6) ☒ Claim(s) 16-18 and 31-40 is/are allowed.
- 7) ☒ Claim(s) 19-21 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-889)
- Paper No(s) Mail Date ____

- 4) ☒ Interview Summary (PTO-413)
Paper No(s) Mail Date 201203
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Continued Examination under 37 C.F.R 1.114

1) A request for continued examination under 37 C.F.R 1.114, including the fee set forth in 37 C.F.R 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R 1.114, and the fee set forth in 37 C.F.R 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 C.F.R 1.114. Applicant's submission filed on 06/30/10 has been entered.

Applicant's Amendment

2) Acknowledgment is made of Applicant's amendment filed 06/30/10 in response to the final Office Action mailed 06/17/09.

Status of Claims

3) Claim 17 has been amended via the amendment filed 06/30/10.
Claims 16-21 and 27-40 are pending.
Claims 16-21 and 31-40 are under examination.

Telephonic Interview

4) The allowable subject matter, the acceptable claim language, and the need to issue an Examiner's amendment were conveyed to Attorney Kenneth Sonnenfeld during a telephonic interview on 03/29/12. Further, telephonic requests were made on 03/30/12 and 04/02/12 asking to call back the Examiner of record as to the Examiner's amendment. The Examiner's calls were not returned by the indicated deadline.

Prior Citation of Title 35 Sections

5) The text of those sections of Title 35 U.S. Code not included in this action can be found in a prior Office Action.

Prior Citation of References

6) The references cited or used as prior art in support of one or more rejections in the instant Office Action and not included on an attached form PTO-892 or form PTO-1449 have been previously cited and made of record.

Rejection(s) Withdrawn

7) The rejection of claims 17-21 and 31 made in paragraph 13 of the Office Action mailed 06/17/09 under 35 U.S.C § 103(a) as being unpatentable over Lock *et al.* (*Microbial Pathogenesis* 21: 71-83, 1996, of record) in view of Paton *et al.* (*Infect. Immun.* 54: 50-55, 1986, of record) or Walker *et al.* (*Infect. Immun.* 55: 1184-1189, 1987, of record), is withdrawn in light of Applicants' amendment to the base claim.

Rejection(s) under 35 U.S.C. § 112, Second Paragraph

8) The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude one or more claims particularly pointing out and distinctly claiming the subject matter which the Applicant regards as his/her invention.

9) Claims 19-21 are rejected under 35 U.S.C § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which Applicants regard as the invention.

(a) Claim 20 is indefinite because it lacks sufficient antecedent basis in the limitation 'cell' in line 1. For sufficient antecedence, it is suggested that Applicants replace the above-identified limitation with the limitation --the cell--.

(b) Claim 19 is incorrect in lacking a preceding article before the limitation 'cell' in line 1. It is suggested that Applicants replace the above-identified limitation with the limitation --a cell--.

(c) Claim 21, which depends from claim 20, is also rejected as being

indefinite because of the indefiniteness identified above in the base claim.

Remarks

10) Claims 19-21 stand rejected. Claims 16-18 and 31-40 are allowable.

Correspondence

11) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. The Fax number for submission of amendments, responses and/or papers is (571) 273-8300, which receives transmissions 24 hours a day and 7 days a week.

12) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (in USA or CANADA) or 571-272-1000.

13) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Gary Nickol, can be reached at (571) 272-0835.

/S. Devi/
Primary Examiner
AU 1645

April, 2012